



AP13727
JAN

Please type a plus sign (+) inside this box →

PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/745,098
Filing Date	12/20/2000
First Named Inventor	Carlos Orlando Vilacha Zanoni
Group Art Unit	3727
Examiner Name	Nathan Jeffrey Newhouse
Attorney Docket Number	286765-00001

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Return Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		

RECEIVED

JAN 15 2003

TECHNOLOGY CENTER R3700

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	David C. Jenkins Eckert Seamans Cherin & Mellott, LLC
Signature	
Date	January 3, 2003

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date:

Typed or printed name	David C. Jenkins
Signature	
Date	January 3, 2003

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 160.00)

Complete if Known

Application Number	09/745,098
Filing Date	12/20/2000
First Named Inventor	Carlos Orlando Vilacha Zanoni
Examiner Name	Nathan Jeffrey Newhouse
Art Unit	3727
Attorney Docket No.	286765-00001

METHOD OF PAYMENT (check all that apply)

Check Credit card Money Order Other None

 Deposit Account:

Deposit Account Number 02-2556
Deposit Account Name Eckert Seamans

The Commissioner is authorized to: (check all that apply)
 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 740	2001 370	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 510	2003 255	Plant filing fee	
1004 740	2004 370	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	-20** =	X	=	Fee from below	Fee Paid
Independent Claims	- 3** =	X	=		
Multiple Dependent					

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee (\$)	Fee Code (\$)	Fee (\$)	Fee Description
1051 130	2051 65	Surcharge - late filing fee or oath		
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet		
1053 130	1053 130	Non-English specification		
1812 2,520	1812 2,520	For filing a request for ex parte reexamination		
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action		
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action		
1251 110	2251 55	Extension for reply within first month		
1252 400	2252 200	Extension for reply within second month		
1253 920	2253 460	Extension for reply within third month		
1254 1,440	2254 720	Extension for reply within fourth month		
1255 1,960	2255 980	Extension for reply within fifth month		
1401 320	2401 160	Notice of Appeal		
1402 320	2402 160	Filing a brief in support of an appeal		
1403 280	2403 140	Request for oral hearing		
1451 1,510	1451 1,510	Petition to institute a public use proceeding		
1452 110	2452 55	Petition to revive - unavoidable		
1453 1,280	2453 640	Petition to revive - unintentional		
1501 1,280	2501 640	Utility issue fee (or reissue)		
1502 460	2502 230	Design issue fee		
1503 620	2503 310	Plant issue fee		
1460 130	1460 130	Petitions to the Commissioner		
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)		
1806 180	1806 180	Submission of Information Disclosure Stmt		
8021 40	8021 40	Recording each patent assignment per property (times number of properties)		
1809 740	2809 370	Filing a submission after final rejection (37 CFR 1.129(a))		
1810 740	2810 370	For each additional invention to be examined (37 CFR 1.129(b))		
1801 740	2801 370	Request for Continued Examination (RCE)		
1802 900	1802 900	Request for expedited examination of a design application		

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 160.00)

TECHNOLOGY CENTER R3700 RECEIVED JUN 15 2003 160	Fee Paid

SUBMITTED BY

Name (Print/Type)	David C. Jenkins	Registration No. (Attorney/Agent)	42,691	Telephone	412/566-1253
Signature				Date	January 3, 2003

(Complete if applicable)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

#10
383

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Examiner: Nathan Jeffrey Newhouse

Group Art Unit: 3727

In re application of:

CARLOS ORLANDO
VILACHA ZANONI ET AL.

Serial No.: 09/745,098

Filed: December 20, 2000

**CROWN CLOSURE HAVING A
REDUCED RADIUS AND METHOD
OF MANUFACTURE**

Attorney Docket No. 286765-00001

APPEAL BRIEF

January 3, 2003

Assistant Commissioner for Patents
BOX AF
Washington, D.C. 20231

Dear Sir:

This is an Appeal from the decision of the Examiner dated August 23, 2002 finally rejecting claims 1-16. The claims are set forth in Appendix A, which is attached hereto. Due to the specific nature of the issues involved in this Appeal, an Oral Hearing is not deemed necessary and is not requested.

Real Party In Interest

The real parties in interest are the inventors, Carlos Orlando Vilacha Zanoni and Klaus Uhlig Peterssen.

Related Appeals and Interferences:

There are no other appeals or interferences known to Appellants or to Appellants' legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

Status of the Amendments

There are currently no amendments to the pending claims. The claims as they stand on Appeal are contained in the Appendix A to this Brief.

Status of the Claims

Claims 1-16 remain pending in this application.

Claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Patent No. 3,827,549.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* U.S. Patent No. 3,827,549 in view of *Ferngren*, U.S. Patent No. 2,099,056.

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenards*, U.S. Patent No. 3,827,594 in view of *Myer*, U.S. Patent Number 3,497,098.

The Invention

This invention relates to a cap, generally known as “crown cork” or a “crown closure,” used for sealing mainly glass bottles with carbonated (beer, soft drinks, etc) and non-carbonated beverages (juices, sauces, etc). Prior art crown closures have a shell with a generally flat disk, a curved portion, and a depending skirt. When attached to a bottle, the skirt and the curved portion were crimped to conform to the contour of a bottle mouth. The disadvantage of the prior art crown closures was that the curved portion did not conform to the shape of the bottle prior to crimping. Because of this, prior art crown closures tended to slip during the crimping procedure.

This invention overcomes the disadvantage of the prior art by providing a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle. Thus, during the crimping procedure, the crown closure is less likely to slip.

Issues Presented

1. Whether the Appellants' invention as claimed in claims 1-12 are anticipated by *Leenaards*, U.S. Patent No. 3,827,549.
2. Whether the Appellants' invention as claimed in claim 13 is unpatentable over *Leenaards*, U.S. Patent No. 3,827,549 in view of *Ferngren*, U.S. Patent No. 2,099,056.
3. Whether the Appellants' invention as claimed in claims 14-16 are unpatentable over *Leenards*, U.S. Patent No. 3,827,594 in view of *Myer*, U.S. Patent Number 3,497,098.

Grouping of Claims

Claims 1, 7, 13, and 14 each stand separately. Claims 2-6 stand or fall with claim 1. Claims 8-12 stand or fall with claim 7. Claims 15 and 16 stand or fall with claim 14.

Argument

Claims 1-12; Rejected under 35 U.S.C. §102(b)

Claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Pat. No. 3,827,594. *Leenaards* discloses a crown closure that is shaped to accommodate a seal that engages the lateral face of the bottle to which the closure is attached. That is, the seal is located between the curved portion of the crown closure and the outer side of the bottle. As such, the curved portion of the shell cannot be structured to have the same shape as the container to which the closure will be attached as the curved portion must shaped to provide a space for the seal. This space is identified by reference number 18 on figure 2 and described at Col. 4, lines 3-4. *Leenaards* notes that *after* deformation, i.e. the crimping procedure, the closure is shaped to the mouth of the container.

The Examiner states that, "Leenaards, as shown in figures 2 and 5, teaches the crown closure having a curved portion that is the same shape as the mouth contour of the bottle prior to crimping." Appellants disagree. As shown in figures 2 and 5, the radius of curvature for the outer edge of the mouth is much smaller than the radius of

curvature of the crown. It is this difference in the curvature radii that creates the space between the mouth and the crown identified by the reference number 18. Additionally, it is this difference in the curvature radii that creates the problem that the present invention overcomes, namely, the crown shifting on the bottle prior to crimping.

With regard the Examiner's statement speculating as to a possible shape for the *Leenaards* crown if the liner were in a different location, Appellants note that the purpose of the *Leenaards* invention is to have the liner at the lateral location. Therefore, speculation as to the shape of crown without the liner in this location is to go beyond what is disclosed in the *Leenaards* reference.

As stated in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.... The identical invention must be shown in as complete detail as is contained in the ... claim.

Id., citing (*Verdigaal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989)). It is submitted that upon reading the *Leenaards* reference, one skilled in the art would not consider having a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle.

Claim 13 stands rejected under 35 U.S.C. §103(a)

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Ferngren*, U.S. patent No. 2,099,056. *Leenaards* is discussed above. *Ferngren* discloses a flexible plastic cap for a flexible bottle. *Ferngren* does not discuss a crown closure. As crown closures and plastic caps are different types of closures, these references cannot be combined.

Moreover, as stated in, *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987), “obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some *teaching, suggestion, or incentive* supporting combination.” (emphasis added). Put another way, “the mere fact that

disclosures or teachings of the prior art *can be* retrospectively combined for the purpose of evaluating obviousness/nonobviousness issue does not make the combination set forth in the invention obvious, unless the art also suggested the desirability of the combination” *Rite-Hite Corp. v Kelly Co.*, 629 F.Supp. 1042, 231 U.S.P.Q. 161, *aff’d* 819 F.2d 1120, 2 U.S.P.Q.2d 1915 (E.D.Wis.1986) (emphasis added). Similarly, the court in, *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991), stated that “both the suggestion [to make the claimed apparatus] and the reasonable expectation of success must be found in the prior art, not in the applicant’s disclosure.”

With regard to *Leenaards* and *Ferngren*, there is no *teaching, suggestion, or incentive* in either reference to suggest the combination recited by the Examiner. As such, it is not proper for the Examiner to base a rejection under 35 U.S.C. §103(a) on these combination of references.

Claims 14-16 stand rejected under 35 U.S.C. §103(a)

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Myer*, U.S. patent No. 3,497,098. *Leenaards* is described above. *Myer* discloses a crown closure having a protective skirt. *Myer* further discloses a method of manufacturing the crown closure using a punch press and a blanking die. *Myer* does not, however, disclose the diameter of the blanks used in the die press. Additionally, *Myer* does not discuss any limitation to the extent of the serrations. However, as shown in the figures, the serrations of *Myer* extend into the curved portion of the shell. *Leenaards* discloses that finished crown closures have a skirt diameter of between 20 and 40 mm.

As discussed above in relation to the rejection of claim 13, in order to combine references, there must be some “teaching, suggestion, or incentive supporting combination.” Again, there is no such teaching in these two references. The Examiner has further cited *In re Fine*, 837 F.2d 1071 (Fed Cir. 1988) to support the statement that “obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves

or in the knowledge generally available to one of ordinary skill in the art.” (emphasis added). In *Fine* the court reversed the §103(a) rejection in dispute after noting that the Examiner made a “bald assertion” that it would have been obvious to combine the prior art. *Id.* at 1074. The court further noted that merely having similar prior art may lead one skilled in the art to try a combination, but that “obvious to try” is not a legitimate test of patentability.” *Id.* at 1075. The court concluded that the, “teachings of references can be combined *only* if there is some suggestion or incentive to do so.” *Id.* (emphasis in original). Here the Examiner has made only a bald assertion that the prior art references can be combined. The Examiner has not shown a “suggestion or incentive to do so.”

1. Whether the Appellants’ invention as claimed in claims 1-12 are anticipated by *Leenaards*, U.S. Patent No. 3,827,549.

Independent claims 1 and 7, and each of the claims that depend therefrom, require a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle. Because *Leenaards* does not teach, either expressly or inherently, crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle, the reference does not anticipate the invention as recited in claims 1-6 or 7-12.

2. Whether the Appellants’ invention as claimed in claim 13 is unpatentable over *Leenaards*, U.S. Patent No. 3,827,549 in view of *Ferngren*, U.S. Patent No. 2,099,056.

In this rejection the Examiner has only stated that the cited references can be combined. The references do not have a teaching, suggestion, or incentive supporting such a combination. Nor do the references suggest the desirability of the combination or that such a combination would be a success. As such, these references cannot be combined for the purpose of a rejection under 35 U.S.C. § 103(a) and, the invention as recited in claim 13 is not obvious.

3. Whether the Appellants' invention as claimed in claims 14-16 are unpatentable over *Leenards*, U.S. Patent No. 3,827,594 in view of *Myer*, U.S. Patent Number 3,497,098.

Independent claim 14 recites a method of producing crown closures wherein the blanks used to form the crown closure have a diameter of about 1.4 inches. As these two references cannot be combined and as neither reference individually teaches the use of 1.4 inch diameter blanks, these references cannot suggest the method set forth in claim 14.

Claims 15 and 16, which each depend from claim 14, each further recite that the serrations do not extend into the curved portion of the shell. As *Myer* teaches that the serrations extend into the curved portion of the shell and because these two references cannot be combined, these references cannot suggest the method set forth in claims 15 and 16.

Summary And Conclusion

It is respectfully submitted that claims 1-12 are not anticipated by *Leenaards*. It is further submitted that Claim 13 is patentable over *Leenaards* in view of *Ferngren*. It is further submitted that claims 14-16 are patentable over *Leenards* in view of *Myer*. Therefore, it is respectfully requested that the Board reverse the Examiner's rejections of Claims 1-16 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,



David C. Jenkins
Registration No. 42,691
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-1253
Attorney for Appellants

APPENDIX A

1. A crown closure comprising:
a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;
said curved portion disposed between said top and said skirt;
a liner secured to said inside; and
wherein said curved portion is adapted to be the same shape as the mouth contour of a bottle.

2. The crown closure of claim 1 wherein said curved portion has a radius greater than about 1.7 mm.

3. The crown closure of claim 1 wherein said curved portion has a radius of about 0.157 inches (4 mm).

4. The crown closure of claim 1 wherein said shell is manufactured from a blank having a diameter of about 1.4 inches (35.5 mm).

5. The crown closure of claim 1 wherein said shell is formed from a blank having a diameter less than about 1.4446 inches.

6. The crown closure of claim 1 wherein said shell has twenty serrations.

7. A closed container comprising:
a bottle having a mouth;
a crown closure secured over said mouth;
said crown closure comprising:
a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;
said curved portion disposed between said top and said skirt;
a liner secured to said inside; and

wherein said curved portion is adapted to be the same shape as the contour of said mouth.

8. The closed container of claim 7 wherein said curved portion has a radius greater than about 1.7 mm.

9. The closed container of claim 7 wherein said curved portion has a radius of about 0.157 inches (4 mm).

10. The closed container of claim 7 wherein said shell is manufactured from a blank, and said blank has a diameter of about 1.4 inches (35.5 mm).

11. The crown closure of claim 7 wherein said shell is formed from a blank having a diameter less than about 1.4446 inches.

12. The closed container of claim 7 wherein said shell has twenty serrations.

13. The closed container of claim 7 wherein:
said bottle mouth includes an upper portion and a lower portion with a fulcrum therebetween; and
said curved portion has a radius that is similar to said upper portion.

14. A method of producing crown closures comprising the steps of:
a) providing a die press;
b) providing metal sheets which may be die pressed into crown closures;
c) using said die press to form blanks having a diameter of about 1.4 inches (35.5 mm); and
d) using said die press to form crown closures using said blanks.

15. The method of claim 14, wherein:
said crown closures include a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion; and

said curved portion has a radius of about 0.157 inches (4 mm).

16. The method of claim 14, wherein:

said crown closures include a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion; and
said curved portion has a radius greater than about 1.7 mm.